

May 11, 2009

William D. Blakely, Esq.
Polsinelli Shughart, PC
1152 15th Street, NW
Suite 800
Washington, DC 20005

Re: FOIA Appeal dated April 9, 2009

Dear Mr. Blakely:

On January 19, 2009, you made a Freedom of Information Act (FOIA) request via e-mail which you then narrowed on January 28, 2009. You originally requested any documentation/correspondence NCUA had concerning CUNA Mutual Insurance Company (CUMIS), or any of its affiliated entities and D. Edward Wells Federal Credit Union (the FCU). Your modified request was for any and all correspondence between NCUA, as the liquidating agent for the FCU, and CUMIS. Staff attorney Linda Dent responded to your request on March 16, 2009 releasing 101 pages, some of which were partially redacted, and withholding 10 pages in full pursuant to exemptions 2, 6, and 8 of the FOIA (5 U.S.C. §552(b)(2), (6), and (8)). You submitted a request for reconsideration/appeal in a letter to Ms. Dent dated April 9, 2009, requesting unredacted copies of several of the pages you received. Enclosed with your April 9th letter was an affidavit from your client. The affidavit was submitted in support of the request for reconsideration/appeal. The redactions to the pages that are the subject of your April 9th letter were made pursuant to exemptions 6 and 8 of the FOIA; exemption 2 was not used for any these redactions. You requested that your original request be reconsidered and that if the response would be to deny the reconsideration, your letter be accepted as an appeal. There is no process for FOIA reconsideration so your letter has been processed as an appeal. Your appeal for unredacted copies of the pages noted in your appeal is granted in part and denied in part. Portions of the documents redacted pursuant to exemption 8 are now released; the portions redacted pursuant to exemption 6 remain withheld as explained below. Copies of the pages with newly released information are enclosed.

In your April 9th letter you also requested copies of any and all documents related to the Benton investigation of the FCU as well as the final report issued by Benton as referred to in an e-mail dated March 4, 2005, which you received. As Hattie Ulan of this Office explained to you in a telephone conversation on April 30th, since the Benton records were not part of your revised request of January 28th, we will treat your request for them as a new FOIA request, and their release will be addressed in a separate letter to you from Ms. Dent.

Exemption 6

We note that neither your client's name nor any information about him appeared on any of the redacted documents subject to appeal. Personal information concerning a FOIA requestor will

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generally not be withheld from the requestor (or from his attorney) pursuant to the privacy exemption.

Minimal information consisting of names of credit union personnel, e-mail addresses and a few personal details about individuals named was withheld pursuant to exemption 6. Exemption 6 protects information about an individual in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). The courts have held that all information that applies to a particular individual meets the threshold requirement for privacy protection. United States Department of State v. Washington Post Co., 456 U.S. 595 (1982). It includes any personal information. Once a privacy interest is established, application of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). The withheld information meets the requirement for exemption 6 protection. There is minimal, if any, public interest in disclosing this personal information. The individuals' privacy interests outweigh any public interest in disclosure. Therefore the minimal personal information continues to be withheld pursuant to exemption 6.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

/S/

Robert M. Fenner
General Counsel

Enclosures

GC/HMU:bhs
09-0428
09-FOI-00044
09-APP-00007